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NO. 82-975
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' BRIEF

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Question Presented

May a municipality prohibit the attachment of signs, without regard to content, to specified categories of public property in order (1) to reduce visual clutter which mars the aesthetic quality of the environment, (2) to prevent traffic and other hazards and (3) to preserve much of such property for its primary use?

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APPELLANTS' BRIEF

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit from which this appeal is taken appears at App. 1a attached to the Jurisdictional Statement and is reported at 682 F.2d 847. The unpublished Findings of Fact and Conclusions of Law of the District Court appear at App. 15a attached to the Jurisdictional Statement.

JURISDICTION

On July 30, 1982, the Court of Appeals for the Ninth Circuit filed its opinion declaring that Los Angeles Municipal Code Section 28.04 is unconstitutional on its face as repugnant to the First and Fourteenth Amendments to the United States Constitution. On September 10, 1982, the Court of Appeals denied a timely petition for rehearing.

A notice of appeal to this Court from that judgment was timely filed with the Clerk of the United States Court of Appeals for the Ninth Circuit on October 4, 1982. This appeal was docketed in this Court on December 9, 1982, within 90 days from September 10, 1982, the date of entry of final judgment below. This Court noted probable jurisdiction on February 22, 1983. The jurisdiction of this Court rests on 28 U.S.C. §1254(2).

CONSTITUTIONAL AND ORDINANCE PROVISIONS INVOLVED

1. The First Amendment to the Constitution provides in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech . . ."

2. The Fourteenth Amendment to the Constitution provides in pertinent part:

> "No State shall . . . deprive any person of life, liberty or property, without due process of law; . . ."

3. The ordinance involved is Los Angeles Municipal Code Section 28.04. Its contents are set forth at App. 26a attached to the Jurisdictional Statement.

STATEMENT

1. Proceedings

In 1979, Roland Vincent was a candidate for the Los Angeles City Council. His campaign organization, Taxpayers for Vincent (Taxpayers), entered into a contract with Candidates' Outdoor Graphics Service (COGS) to attach campaign signs in support of Mr. Vincent to the cross wires of utility poles in the City. (A. 9.) City employees, acting pursuant to Municipal Code Section 28.04, removed those signs. (A. 73.)

Thereupon, Taxpayers and COGS filed a lawsuit in the United States District Court for the Central District of California, seeking to enjoin the City from removing the signs on the ground that Section 28.04 violates their First Amendment rights. [1/] The plaintiffs also sought compensatory and punitive damages against the City. The jurisdiction of the federal courts was premised on 28 U.S.C. §§1343, 2201, and 2202, and 42 U.S.C. §1983.

Soon after the complaint was filed, the District Court denied the plaintiffs' application for a preliminary injunction. (A. 99.) Later, both the plaintiffs and the defendants moved for summary judgment (the plaintiffs reserving trial

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[1/] Although the complaint also alleged that another section of the Municipal Code, Section 28.03, also deprived the plaintiffs of their First Amendment rights (A. 4, 5), and although the District Court upheld that section as constitutional (App. 2la), the Court of Appeals did not rule on that issue. Section 28.03 prohibits the attachment of signs "to or upon any building, wall or part thereof, or upon any private property without the consent of the owner, agent or occupant thereof."

on the issue of damages). [2/] The District Court granted the City's motion for summary judgment, upholding the constitutionality of the ordinance. Taxpayers and COGS appealed.

The Court of Appeals for the Ninth Circuit reversed on the ground that the ordinance is unconstitutional on its face. It instructed the District Court on remand to enter partial summary judgment for the plaintiffs.

2. The Ordinance

Municipal Code Section 28.04 prohibits the posting of handbills and signs, regardless of content, on certain specified types of public and utility property (*e.g.*, traffic signs, street signs, electric lights, hydrants, trees, utility poles and utility pole cross wires). The City's police and public works departments are authorized to remove signs found posted in violation of the ordinance. (App. 26a.)

The ordinance does not ban all political signs in the City or even on all public property. It merely prohibits the attachment of signs to certain types of public and utility property described in the ordinance.

3. District Court Findings and Supporting Evidence

The record below reveals and the District Court found, *inter alia*, that tens of thousands of signs are illegally

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[2/] The City's motion was based not only on the evidence submitted specifically in connection with the cross-motions for summary judgment, but as well on affidavits (and accompanying exhibits) filed by the City in opposition to the plaintiffs' earlier application for a preliminary injunction. (A. 104.)

posted and removed every year (App. 17a), that such signs, including those attached to utility pole cross wires, "constitute a clutter and visual blight" (App. 17a-18a), that some signs block views and create traffic hazards (App. 18a), and that certain signs posted on utility poles may create hazards to workers scaling the poles (App. 18a). The District Court also found that both political and non-political signs are found posted and are removed without regard to their content. (App. 17a.)

During the 1977-78 fiscal year, the City's Street Use Inspection Division (Bureau of Street Maintenance, Department of Public Works) alone spent 8,921 worker hours removing 68,869 illegally posted signs, at a cost of approximately $113,160. (A. 42.) During the first five months of 1980, that division removed 51,662 signs. (A. 107.) Those signs related to a great variety of subjects, including the announcement of events, advertisements for commercial products and real estate developments, lost pets and support for political candidates and ballot measures. (A. 41.)

The posting of such signs on the objects mentioned in Section 28.04 detrimentally affects the visual environment. Signs posted on those objects mar the beauty of tree lined streets (A. 79), residential neighborhoods (A. 89-91), and business districts (A. 115, 116). They are often found attached to utility poles which line the streets (A. 80, 86, 115, 131, 136), sometimes covering entire poles (A. 129, 134). If not removed, they deteriorate on the poles (A. 122, 131, 136) or are just covered over by new signs (A. 81, 82, 84). The signs which Taxpayers and COGS sought to post — on utility pole cross wires (A. 96) — add somewhat to the visual clutter and "inevitably would encourage greatly increased posting in other unauthorized and unsightly places . . ." (App. 18a.)

The problem is not local to Los Angeles but involves other communities as well. COGS has contracted with more than 1,000 campaigns to erect its signs in more than 2,000 communities. (A. 146.)

The record also reveals, as the District Court found, that "[r]easonable regulation of sign placement, including a prohibition on posting signs on the items of public and utility property enumerated in Section 28.04, is of importance" in accomplishing the City's land use planning goals (App. 17a; A. 34-35), [3/] and absent "the regulation provided by Section 28.04, the indiscriminate and unregulated placement of signs on public property could seriously impede the effectiveness of the City's sign regulations, contained in the City's Planning and Zoning Code, applicable to private properties." (App. 17a.)

SUMMARY OF ARGUMENT

1. The ordinance at issue in this lawsuit does not infringe on the plaintiffs' right to disseminate their messages in a public forum. The objects on which the ordinance does not permit signs to be posted are not themselves part of a traditional First Amendment forum, and the City has not designated them as places where signs may be posted. Moreover, the City has not "opened the forum" by permitting certain types of signs and objects to be placed on public sidewalks or over public streets.

[3/] The planning goals to which the court had reference included encouraging the most appropriate use of land, conserving and stabilizing property values, providing adequate open space for light and air, preventing and fighting fire, lessening congestion on streets, facilitating adequate provision of community utilities and facilities, and promoting health, safety, and the general welfare. (App. 17a.)

2. Even if, *arguendo*, the objects enumerated in the ordinance were deemed a part of a public forum, the ordinance nevertheless qualifies as a reasonable time, place and manner regulation. It does not constitute a total ban on a manner of communication. The ordinance is content-neutral, serves significant governmental interests, and permits adequate alternative avenues of communication. It is no more restrictive than necessary to accomplish its purposes.

3. Temporary signs are a cause of visual clutter and thus constitute aesthetic harm. They are ugly, quite numerous and distracting. Their presence on the objects enumerated in the ordinance interferes with legitimate zoning and planning concerns of municipal government and contributes to visual blight.

4. The ordinance directly advances the City's interest in reducing visual clutter. The signs regulated by the ordinance are themselves a direct cause of the problems the City seeks to remedy. Therefore, the most direct and logical approach is to prohibit the attachment of signs where they create the problems. This the ordinance does.

5. The ordinance is needed to assure that the government and utility property on which signs may not be posted will be preserved for its ordinary and normal uses. Temporary signs attached to such property are inconsistent with those uses. Also, the ordinance is needed to prevent traffic and other hazards caused by signs posted on some of such property.

6. The ordinance does not unreasonably interfere with the use of public places, including streets and sidewalks, for expressive purposes. Temporary signs, including political signs, are permitted to be posted on private property along the streets. Also, many other traditional uses of

the streets for free speech purposes are allowed. Thus, the ordinance leaves available ample alternative channels of communication in the same general location of the objects to which signs may not be attached.

7. The ordinance is not more restrictive than necessary to accomplish its purposes. Prohibiting signs on the objects enumerated in the ordinance is the most direct, and really the only effective way of solving the difficult problems posed by temporary signs. Other possible alternatives create their own constitutional and severe practical problems.

ARGUMENT

I. INTRODUCTION

The City's ordinance challenged in this lawsuit does not impermissibly infringe on the plaintiffs' constitutional right to use the public streets and sidewalks as a First Amendment forum. Although it prohibits the attachment of handbills and signs to certain objects on and adjacent to the streets, it permits traditional uses of the streets and sidewalks for activity protected by the First Amendment.

This Court has rejected the notion that persons who wish to express their views "have a constitutional right to do so whenever and however and wherever they please." ***Adderley v. Florida***, 385 U.S. 39, 47-48 (1966). In a recently decided case, this Court repeated the principle "that the 'First Amendment does not guarantee access to property simply because it is owned or controlled by the government.' " ***Perry Education Ass'n. v. Perry Local Educators' Ass'n.***, ____U.S.____, 74 L.Ed.2d 794, 805 (1983), quoting ***United States Postal Service v. Greenburgh Civic Ass'ns.***, 453 U.S. 114, 129 (1981).

At times, a government's attempts to regulate expressive activity must give way to overriding First Amendment values. However, "at times First Amendment values must yield to other societal interests." ***Metromedia, Inc. v. City of San Diego***, 453 U.S. 490, 501 (1981). Whether a particular regulation is valid depends on the First Amendment values at stake, the extent to which the regulation inhibits speech and the nature of the societal interests involved. As a plurality of this Court stated in *Metromedia*:

> "Each method of communicating ideas is 'a law unto itself' and that law must reflect the 'differing natures, values, abuses and dangers' of each method."
>
> 453 U.S. at 501.

Here, local government prohibits the attachment of handbills and signs to objects (owned by the government or public utilities) which do not constitute a public forum, although they are located on or adjacent to a traditional First Amendment forum, *i.e.*, the streets. The ordinance permits adequate use of that forum, as well as other effective means, for the expression of political and other views. Moreover, the ordinance is needed to advance significant and legitimate government interests which cannot adequately be protected by more narrow means.

II. THE CITY'S ORDINANCE DOES NOT INFRINGE ON FREE SPEECH IN A PUBLIC FORUM.

A. The Objects Enumerated In Section 28.04 Do Not Constitute A Public Forum.

The Court of Appeals erred in considering the objects enumerated in the City's ordinance to be part of a "public

forum." Although the objects enumerated in Section 28.04 are located along the streets, those objects, unlike the sidewalks and streets themselves, do not constitute a "public forum." Neither by "tradition" nor by specific "designation" have those objects been set aside for use by people who wish to express their views. *See Perry Education Ass'n., supra*, ____U.S.____ , 74 L.Ed.2d at 805.

Unlike streets, parks and town squares, which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions," *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939), these objects were erected and are maintained for other purposes. Despite their illegal use as such, they were never intended to serve as signposts. Although *adjacent* to traditional public forums, the objects themselves do not quality as such. [4/] Moreover, there is no pressing need to use these objects as communicative

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[4/] The case of *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir. 1976), *cert. denied*, 431 U.S. 913 (1977), cited by the Ninth Circuit below (App.8a), invalidated an ordinance which placed impermissible burdens on political signs erected on *private* property. That case did not, however, decide that the kinds of objects enumerated in Section 28.04 are part of a traditional public forum. Nor, as the court below asserts (App. 7a-8a), did the California Court of Appeal make that assumption in *Sussli v. City of San Mateo*, 120 Cal.App.3d 1, 8, 173 Cal.Rptr. 781, 785 (1981), *cert. denied*, 454 U.S. 1085 (*See, id.*, at 13 for the contrary view of the dissent.)

In *Dulaney v. Municipal Court*, 11 Cal.3d 77, 520 P.2d 1, 112 Cal.Rptr. 777 (1974), also cited by the Ninth Circuit (App.8a), the California Supreme Court recognized utility poles in San Francisco as a public forum only because, in the special context of that case, that city had opened the forum by permitting signs to be posted upon obtaining a permit. As the Ninth Circuit noted, the California Supreme Court "expressly reserved 'the question under what circumstances public property *must* be made available, if at all, as a forum for First Amendment activities.'" App.8a, *Dulaney* at 781, n. 6 (emphasis in original).

tools, inasmuch as there already exist other adequate and effective uses of the public streets for that purpose. Thus, to say that these objects have been turned into public forums by continued, illegal use, would be to turn the law on its head.

B. The City Has Not "Opened The Forum."

Nor has the City "opened the forum" by allowing signs to be attached to limited kinds of public property. Selective access to some government property does not transform other such property into free speech arenas. *See Perry Education Ass'n., supra*, ____U.S.____ at , 74 L.Ed.2d at 806; *Greer v. Spock*, 424 U.S. 828, 838, n. 10 (1976).

In each case in which the City allows certain of its property to be used to erect signs, its permission furthers an important government interest, and the regulations under which that property may be used adequately assures that the maintenance of such signs will not cause the problems which Section 28.04 seeks to avoid.

The installation of permanent metal plaques in the sidewalk to commemorate historical, cultural and similar events and personalities is permitted by Municipal Code Section 28.04(d). (App. 26a.) Because permits are required, there is reasonable assurance that the installation of such plaques will not block pedestrian traffic, cause hazards over which someone could trip and fall or interfere with sidewalk maintenance.

The banners which the City permits to span over the center of its streets (Municipal Code Section 62.132) are an entirely different "forum" from signs posted on the

devices enumerated in Section 28.04. Banners are strung across streets, and there are sufficient assurances through the permit system that banners will not create the problems associated with posting temporary signs on the objects enumerated in Section 28.04.

Likewise, newsracks constitute an entirely different forum than posted signs, and it is hardly reasonable to conclude that because the City by ordinance, Municipal Code Section 42.00(f), regulates newsracks located on public sidewalks, the City is likewise required to permit handbills and signs to be attached to a large number of other, unrelated devices located on or near sidewalks.

Moreover, the signs which are attached to sign posts at entrances to the City Hall East Mall merely identify the tenants of a commercial mall located under City Hall East. The mall is owned by the City and contains several commercial shops. The signposts were erected by the City at entrances to the mall in order to identify the shops located in the mall. (A. 157.)

III. EVEN IF, FOR THE SAKE OF ARGUMENT, THE CITY'S ORDINANCE WERE DEEMED TO LIMIT THE USE OF A PUBLIC FORUM, IT NEVERTHELESS IS A REASONABLE REGULATION OF THE USE OF PUBLIC PROPERTY SUPPORTED BY LEGITIMATE AND SIGNIFICANT GOVERNMENT INTERESTS.

A. The City's Ordinance Qualifies as a Reasonable Time, Place and Manner Regulation.

The City contends that Section 28.04 does not abridge the plaintiffs' right to use a "public forum." However,

assuming *arguendo* that the objects enumerated in that section are deemed to be part of a public forum, the ordinance is nevertheless a valid time, place and manner regulation.

This Court has repeatedly upheld the authority of government to impose reasonable time, place and manner regulations on the exercise of free speech rights when necessary to accomplish legitimate and significant governmental interests. Such regulations will be upheld if they (1) do not attempt to regulate on the basis of content, (2) serve significant governmental interests, and (3) permit adequate alternative avenues of communication. ***Perry Education Ass'n. v. Perry Local Educators Ass'n.***, ____U.S.____, 74 L.Ed.2d at 804 (1983); ***Metromedia, supra***, 453 U.S. at 516; ***Heffron v. Int'l. Soc. for Krishna Consc.***, 452 U.S. 640, 647-648 (1981); ***Consolidated Edison Co. v. Public Serv. Comm'n.***, 447 U.S. 530, 535 (1980); ***Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council***, 425 U.S. 748, 771 (1976); ***United States v. O'Brien***, 391 U.S. 367, 377 (1968). In another case, ***Grayned v. City of Rockford***, 408 U.S. 104, 116 (1972), the Court spoke about the need for such an ordinance to be no more restrictive than necessary to advance the interests served. ***See also Metromedia, supra***, 453 U.S. at 508.

B. The Ordinance Does Not Regulate the Content Of Signs, Whose Location Only Is Regulated.

Section 28.04 applies to all signs, regardless of their content. It places no greater burden on those who desire to use temporary signs to express political messages than it does

on those seeking to convey other messages. Thus, it escapes the fatal flaw of the San Diego billboard ordinance struck down by this Court in ***Metromedia, Inc. v. City of San Diego***, 453 U.S. 490 (1981). The San Diego ordinance afforded more preferable treatment to commercial than to non-commercial signs, and a plurality of the Court therefore found that it violated the First Amendment. *See also* ***Grayned v. City of Rockford***, 408 U.S. 104 (1972), where this Court invalidated a prohibition against picketing near a school, except in connection with a labor dispute.

C. The Ordinance Is Necessary To Prevent Visual Clutter Caused By The Proliferation Of Signs On Certain Types Of Public Property.

1. Temporary Signs On The Objects Enumerated In The Ordinance Are A Cause Of Visual Clutter.

One of the major problems of signs posted on the objects enumerated in Section 28.04 is that there are so many signs. In the first five months of 1980 alone, the City removed more than 51,000 of them, which does not even account for the numerous signs which the City was unable to remove. Given the great number of signs posted on these objects in the face of the City's prohibition, it can only be imagined how many signs would litter the streets if it were legal to put them up.

Nor is the problem confined to periods of election campaigns. These signs are a year-round phenomenon, advertising not only candidates and public issues, but concerts,

land developments, restaurants, and a great variety of other commercial products, services and events. After the election or event to which they apply has passed, they remain, tattered or covered over by new signs.

When there are so many signs, and when they are located on or near objects which themselves carry important safety and directional information, it is simply not possible for drivers and pedestrians to turn away to avoid their impact. There the signs remain, an ugly and distracting eyesore.

A plurality in *Metromedia* recognized that improving the "appearance of the city" is a "substantial" government goal (*Metromedia, supra*, 453 U.S. at 507-508) and that billboards cause "aesthetic harm." In his plurality opinion, Mr. Justice White observed:

> "It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived an 'aesthetic harm.' [Footnote omitted.] San Diego, like many other states and municipalities, has chosen to minimize the presence of such structures."
>
> 453 U.S. at 510.

See also cases cited in *Metromedia, supra*, 453 U.S. at 510, n. 15.

That conclusion is surely just as applicable to temporary signs which proliferate along the City's streets. Although smaller than billboards, they are greatly more numerous, and, because they are temporary, less care is given to the manner of their placement, and little or no effort is made by those who post them to assure their eventual removal.

The views of the plurality in *Metromedia* concerning the problem of aesthetics rest on solid foundations. Those

foundations were expressed in the broad declaration of Mr. Justice Douglas in ***Berman v. Parker***, 348 U.S. 26 (1954):

> "The concept of the public welfare is broad and inclusive. [Citation.] The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."
>
> 348 U.S. at 33.

See also Penn Central Transportation Co. v. New York City, 438 U.S. 104, 129 (1978); ***Village of Belle Terre v. Boraas***, 416 U.S. 1, 9 (1974).

More than just subjective concerns (*e.g.*, the ugliness of signs) are involved. Visual clutter caused by an overabundance of haphazardly erected signs affects the economic and social well-being of society. Such clutter impacts not only the more aesthetically pleasing areas of the City, but the economically disadvantaged areas as well. This impact on the life of a community was recognized by the California Supreme Court in its opinion in ***Metromedia, Inc. v. City of San Diego***, 26 Cal.3d 848, 610 P.2d 407, 164 Cal.Rptr. 510 (1980):

> "Because this state relies on its scenery to attract tourists and commerce, aesthetic considerations assume economic value. Consequently any distinction between aesthetic and economic grounds as a justification for billboard regulations must fail. 'Today, economic and aesthetic considerations together constitute the nearly inseparable warp and woof of the fabric upon which the modern city must design its future.'

(*Metromedia, Inc. v. City of Pasadena, supra*, 216 Cal.App.2d 270, 273; *Burk v. Municipal Court, supra*, 229 Cal.App.2d 696, 702.)"

26 Cal.3d at 861.

The view of a land use planner, contained in a comprehensive work on street graphics, concurs in that evaluation:

> "Street graphics are important because they affect public safety and can make a significant contribution to the life-style of a community. Furthermore, they are a good indicator of what people think of themselves and what they think of their environment. Because they are created at a critical convergence of public and private interests, street graphics reveal a great deal about a community's pride and morale (or lack thereof); its aesthetic level; the vitality of the place; its diversity; the originality of its people; and a sense of order, a brooding conformity, or no order at all. Street graphics are an important expression of a community's culture. They can announce (or scream, mumble), inform (or confuse), delight

(or depress), infer (or insult), stimulate (or irritate), designate (or obfuscate). Most of all they should clearly *index.*" 5/

> W. R. Ewald, Jr. and D. R. Mandelker, *Street Graffics* (1971, American Society of Landscape Architects Foundation), 4.

COGS and Taxpayers would urge, as they did below, that because their signs, looped over utility pole cross wires, contribute only somewhat to the overall blight, Section 28.04 cannot constitutionally be made applicable to those signs. That argument must fail for two reasons. First, the District Court found that permitting signs on the cross wires "would encourage greatly increased posting" in other places, thus entirely frustrating the purposes of the regulation. (App. 18a.) Second, the argument misses the entire point. Their signs, by themselves, may not constitute the entire blight. However, Section 28.04 is not aimed at their signs alone. It is aimed at the cumulative impacts of signs posted all over the City by thousands of persons whose signs — some stuck to telephone poles, some stapled to street signs, some tied to lighting poles and traffic signals, and some looped over utility pole cross wires — constitute

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5/ Mr. Ewald is the planner who authored that portion of the book from which the quotation is taken. At the end of the quoted paragraph, he states as follows: "Using the environment for *selling*, on the other hand, is regarded here as a legitimate but special privilege to be granted only by official action of the community at particular, specific locations." One observation may be appropriate concerning the planner's last point. He appears to have focused attention on government's capacity to control commercial activity through, for example, zoning. He does not appear, however, to have concerned himself with the law *per se*. To the extent that this passage may be interpreted as indicating that the use of the streets for expressive purposes is a privilege rather than a right, the appellants acknowledge that such an interpretation is not supported by current constitutional doctrine. The use of the streets as a free speech forum is, indeed, a right protected by the Constitution from unreasonable interference by government. That right, however, is not absolute, and government may for sufficient reasons impose limiting regulations.

an unsightly and distracting mess. (The plaintiffs' argument is somewhat like saying that a toxic waste disposal ordinance should not apply to a particular manufacturer because his waste does not contribute to all of the problems created by different kinds of waste, and because his waste by itself is but an insignificant part of all the disposed of waste.)

2. The Ordinance Is Significantly Related To Reducing Visual Clutter.

Although the Court of Appeals conceded that "promoting an aesthetic environment by reducing visual clutter is a substantial government interest," it applied the wrong test in deciding that Section 28.04 is not "significantly related to that interest." (App. 9a; 682 F.2d at 851-852.)

Relying on language in Mr. Justice Brennan's concurring opinion in *Metromedia*, the Court of Appeals stated:

> "Before deferring to the City's judgment, we must be convinced that the City is 'seriously and comprehensively addressing aesthetic concerns with respect to its environment.' *Id.* [Citation.] Here the City has not offered to demonstrate that it is engaged in 'a comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an unattractive environment.'"
>
> (App. 10a, 682 F.2d at 852; quoting from *Metromedia, supra*, 453 U.S. at 531.)

That burden represents a minority view inconsistent with First Amendment doctrine established by this Court. In imposing the burden, the court below misread and misapplied the decision of this Court in *Metromedia, supra*.

In his concurring opinion in *Metromedia*, Mr. Justice Brennan characterized San Diego's ban on off-site billboards as a "total ban of a medium of communication"

within that city, justifying a more stringent analysis than that applied by the plurality. 453 U.S. at 526.

Under such circumstances, Mr. Justice Brennan would not only require a municipality to prove that its interests could not be "served by means that would be less intrusive on activity protected by the First Amendment," 453 U.S. at 527, but would also require it to demonstrate that it is committed to eliminating "other obvious contributors to an unattractive environment," 453 U.S. at 531, thus showing that its interest in aesthetics is "genuine and substantial." 453 U.S. at 533.

Adopting that approach as a test of the City's ban on attaching temporary signs to certain types of public property is inappropriate for at least two reasons.

First, the approach does not command a majority of this Court. It is contrary to the approach taken by Mr. Justice White's plurality opinion in *Metromedia*. [6/] The plurality in that case did not find that San Diego's ordinance was a "total ban" on a method of communication. More importantly, even on the scant record before it, the plurality had no trouble concluding that "the twin goals that the ordinance seeks to further — traffic safety and the appearance of the city — are substantial government goals." 453 U.S. at 507-508. In doing so, it accepted the legislative judgment of the city's lawmakers and concluded that the ordinance directly advanced those interests.

Consistent with the approach taken by the plurality in *Metromedia*, scrutiny is needed, not to test the substantiality or genuineness of the City's interest in visual clutter, but to determine whether the expressed interest merely hides an ulterior motive. (No such motive was suggested in *Metromedia*, and none is suggested here.) There is, however, no requirement that a municipality prove that it

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[6/] Although he dissented from the result, Mr. Justice Stevens joined in Parts I through IV of Mr. Justice White's plurality opinion, thereby providing a majority to the views contained therein. 453 U.S. at 541.

is attempting to deal with "other" contributors to an unaesthetic environment before it can reduce visual clutter by regulating temporary signs. The Court of Appeals erred in imposing just such a burden on the City. If signs are a problem, governments should be allowed to seek effective solutions to that problem, even if other, similar problems are not simultaneously attacked.

Second, this case does not involve the total ban of a method of communication, and for that additional reason the court below was in error in applying Mr. Justice Brennan's analysis. The "method" of communication involved in this case is the "temporary political sign," and Section 28.04 does not by any means totally ban such signs. To the contrary, the City permits people to carry such signs, to attach them to their cars and to post them on their own property and on other private property located along the streets with the permission of the owner.

D. The Ordinance Is Necessary To Assure The Normal Use Of Public Property On Which Signs May Not Be Posted.

In *Adderley, supra*, 385 U.S. at 47, this Court held that a state could prohibit a group from demonstrating on a jailhouse driveway, observing:

> "The State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated."

In determining whether the First Amendment requires the City to permit the use of the objects described in Section 28.04 for posting signs, the Court should focus on the

normal uses to which such objects are put and on whether the posting would interfere with those uses. This Court has stated:

> "The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.' . . . The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."
>
> *Grayned, supra*, 408 U.S. at 116.

Although a silent vigil would not unduly interfere with the use of a public library and is thus permitted there, *Brown v. Louisiana*, 383 U.S. 131 (1966), a speech would, and the speaker could constitutionally be required to give his speech in a place where it would not disturb those seeking the quiet of the library. Similarly, a municipality may ban the use of loudspeakers near a school in session because such devices would disrupt the normal activities of the school. *Grayned, supra*, 408 U.S. at 117.

In *Grayned*, this Court clearly recognized that one *manner* of expression might be protected in a specific place, although another manner of expression might not be protected in the same place. Referring to the decision in *Tinker v. Des Moines School District*, 393 U.S. 503 (1969), the Court stated in *Grayned* "that the Des Moines School District could not punish students for wearing black armbands to school in protest of the Vietnam war." 408 U.S. at 117. However, this Court went on to say that it did not suggest in *Tinker* "that students, teachers, or anyone else has an absolute constitutional right to use *all* parts of a school building or its immediate environs for his unlimited expressive purposes." 408 U.S. at 117 (emphasis added). Conduct which "materially disrupts" the normal use of the

place may be restricted in order to preserve that use for the benefit of those who use it. 408 U.S. at 117-118.

Although many uses of the public streets and sidewalks for expressive activity do not interfere with their normal use, there are other uses which do. Affixing signs, handbills and the like to street lamp posts, hydrants, electric lights, utility poles, street signs and traffic signs, for example, is basically incompatible with the normal and primary functions and uses of those devices. Hydrants and signs must be clearly visible, and any obstructions to, or distractions from, their visibility must be avoided. A street sign or traffic direction covered by a handbill is rendered useless. Blocking a hydrant, even partially, by signs could delay firefighters from effectively responding to emergencies. Likewise, signs attached to street light and utility poles are dangerous to those who must service them and may delay or impair emergency repairs. (A. 28-29; App. 18a.)

E. The Ordinance Furthers The City's Interest In Preventing Traffic Hazards.

Affixing signs to many of the devices enumerated in Section 28.04 would additionally interfere with the City's regulation of traffic safety. (App. 18a.)

Signs are intended to divert drivers' attention, and they undoubtedly do so. Drivers must normally be prepared to clearly see and react to a variety of important information, including traffic and directional signs and signals, warnings, and street addresses. In order to react quickly and safely, drivers' attention must remain free of "irrelevant distracting material . . ." *See* P. Connolly, "Visual Considerations: Man, the Vehicle, and the Highway,"

Highway Research News, Winter 1968, 71-74, quoted in Ewald and Mandelker, *Street Graphics*, 17. Signs posted indiscriminately on utility poles, cross wires, street signs, traffic signals and the like are particularly distracting because they are located along the streets on or near the devices which themselves contain important traffic safety information. In addition, such signs might be posted in ways which block the views of drivers. (App. 18a.)

The City's legitimate concern with traffic safety and the reasonableness of restricting the placement of signs and billboards along streets and highways to advance traffic safety have been recognized by this Court in *Metromedia, supra*. Mr. Justice White, speaking for the plurality, stated that it is "far too late" to contend that "traffic safety" is not a "substantial" governmental goal. 453 U.S. at 507-508. Mr. Justice White went on to agree with the conclusion of the California Supreme Court in *Metromedia*, 26 Cal.3d 848, 859, that:

> "A legislative judgment that billboards are traffic hazards is not manifestly unreasonable and should not be set aside. We likewise hesitate to disagree with the accumulated common-sense judgments of local lawmakers and of many reviewing courts that billboards are real and substantial hazards to traffic safety."
>
> 453 U.S. at 509.

Mr. Justice White's observation is just as applicable to Section 28.04, inasmuch as that ordinance seeks to avoid the distraction of signs posted on objects which line the streets.

F. The Ordinance Leaves Available Other Effective Uses Of The Streets As A First Amendment Forum.

The City's ordinance does not unreasonably interfere with the plaintiffs' use of the streets and other public places for expressive purposes. It imposes no outright ban on signs in public places. Taxpayers, COGS, and others like them are free to communicate their views on any subject along the streets, sidewalks and at other public places in innumerable traditional ways. The ordinance permits them to display their signs along the streets, attached to their cars, their homes, their businesses and, with permission, the cars, homes and businesses of others. They are also free to carry their signs, distribute their handbills to passersby and to use numerous other traditional modes of speech.

All the City's ordinance does is withhold from the plaintiffs the use of certain objects located along the streets, on which the City does not permit them to attach their signs. Given the numerous other modes of speech and speech-related conduct available, both in public and private places, the City's regulation has but a slight impact on the plaintiffs' exercise of their First Amendment rights.

Section 28.04 does not involve a total ban on a method of communication. It is thus quite unlike the prohibitions involved in *Schneider v. State*, 308 U.S. 147 (1939) (ban on distribution of handbills) and *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (ban on live entertainment), and the First Amendment analysis appropriate for such total bans is inappropriate in this case.

This Court "has recognized the validity of reasonable time, place or manner regulations that serve a significant governmental interest and *leave ample alternative channels for communication.*" *Consolidated Edison Co. v. Public Serv. Comm'n.*, 447 U.S. 530 (1980), (emphasis added); *see also Hudgens v. N.L.R.B.*, 424 U.S. 507, 520 (1976); *Lloyd Corporation v. Tanner*, 407 U.S. 551, 567 (1972).

Moreover, the principle that "one is not to have an exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some *other* place" (emphasis added; *Schneider, supra*, 308 U.S. at 163; *Grayned, supra*, 408 U.S. at 118, n. 40) is not applicable here. The City does not require the plaintiffs to exercise their rights in some *other* place. As stated above, they *may* use the City streets. They are merely restricted from using a *part* of the streets (or, more accurately, certain public and utility property located on the streets). The ordinance in *Schneider* on the other hand effectively barred any use of the streets to distribute handbills, and it was stricken for that reason. 7/

G. The Ordinance Is No More Restrictive Than Necessary To Accomplish Its Purposes.

The *Metromedia* plurality recognized that:

> "[i]f the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and

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7/ The government in *Schneider* sought to justify its ban against distributing leaflets on the streets on the ground that the ban would prevent littering the streets by persons receiving the leaflets. The Court held that because the government had other, more direct means to prevent littering, it could not ban the leafleting. Here, signs posted in violation of Section 28.04 directly litter the property (*e.g.*, utility poles) on which they are posted. Thus, in a meaningful sense, Section 28.04 is itself a direct regulation of litter.

> perhaps the only effective approach to solving the problems they create is to prohibit them. The city has gone no further than necessary in seeking to meet its ends."
>
> 453 U.S. at 508.

In its opinion below, the Court of Appeals incorrectly held that the City had not utilized the "least drastic means" in its efforts to solve its problems. (App. lla.) In seeking to relieve the visual clutter caused by signs attached to the objects enumerated in Section 28.04, the City may not be relegated to ineffective means.

The Court of Appeals suggested that "the City might regulate the size, design, and construction of the posters, (citation omitted), institute clean up or removal requirements, *id.*, or provide more stringent regulations for the areas of the City more in need of protection, . . ." (App. lla.) The Court of Appeals also suggested that the City "specifically prohibit the erection of signs that obscure hydrants, traffic signs, and signals, or that block motorists' lines of sight." (App. 12a.)

None of these alternatives meaningfully solve the visual clutter problems caused by temporary signs. Regulating the size, design and construction of signs would in no way reduce the great number of signs which are posted and would thus not get to the heart of the problem — sign proliferation. Clean-up or removal requirements could be expected to be much less effective than the current regulation, and they could therefore not be said to constitute effective alternatives. Because these signs infest all areas of the City, providing protection in only some areas would leave those who live and work in the unprotected areas in a

second class status. Although prohibiting signs on only some of the objects enumerated in Section 28.04 might lessen the proliferation, it would not eliminate it and would therefore be ineffective.

Other approaches raise grave constitutional and practical problems, especially for a city the size of Los Angeles.

An approach permitting some signs to be posted, thus giving discretion to local enforcement officials to decide when and where they may be posted, would require those officials to administer well-defined standards to assure that such discretion be exercised consistent with First Amendment rights. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969). The problems involved in administering such a system would be enormous and would raise the spectre of possible abuse.

If, for example, a limited number of signs were permitted, on what basis would the City decide which signs could be posted? Certainly not on any basis related to content. Could the City permit posting on a first-come, first-served basis? How would the City know who put their signs up first, except by requiring permits? And if so, in a city as large and spread out as Los Angeles, with as many objects lining the streets, any licensing scheme would pose an administrative nightmare. In an age of diminishing resources, with other pressing problems facing local government, such a burden would be patently unreasonable.

IV. CONCLUSION

For the reasons set forth above, the judgment of the Court of Appeals was erroneous and should be reversed.

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